



#35 reply brief  
SJD  
10/22/03

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT EXAMINING OPERATIONS

Applicant: Ronald L. Carr

Group Art Unit: 3626

Serial No.: 08/952,001

Examiner: A. Pickard

Filed: November 7, 1997

Docket No.: P 97 194.024

Title: JOINT ASSEMBLY EMPLOYING MULTI-RING GASKET

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service addressed to: Commissioner for Patents, Alexandria VA 22313-1450

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September 24, 2003

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Greetings:

This is a Second Reply to the Examiner's Answer. The Answer was originally mailed January 31, 2003 to an incorrect address. The Answer was remailed on March 21, 2003, and was not received in this Office until March 27, 2003. The examiner and the examiner's supervisor did not agree to reset the period for response, and a first Reply was mailed March 31, 2003 in order to meet the deadline. However, a Petition to the commissioner to reset the period for response has been granted on a Decision mailed July 24, 2003. Accordingly, this Second Reply supercedes and replaces the first Reply.

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### Grouping of Claims

In the Answer, it is indicated that claims 55 and 85 are considered to stand or fall together. It is respectfully submitted that claims 55 and 85 cannot stand or fall together because claims 55 and 85 are both independent claims, and have been rejected on different grounds.

### Claim 55

Claim 55 was rejected under 35 USC §102(b) as being anticipated by Merwarth, U.S. Patent No. Re 11,858 (“Merwarth”) or, in the alternative, under 35 USC §103(a) as being unpatentable over Merwarth.

Any question of anticipation can be dismissed immediately. Merwarth does not anticipate claim 55 because Merwarth does not state that the materials are the same, and it is not inherent that they are the same, especially since in the preferred embodiment Merwarth is explicit that they are not the same.

In that regard, the Answer, at Page 7 (last line) - Page 8, line 3, poses the following questions:

“[W]hy, when Merwarth clearly discloses that ‘soft metal’ is used for the express purpose of sealing, would one of ordinary skill in the art not use the same soft metal at each location (first strip, second strip, and spokes) to create the seal? Why would one choose three separate soft metals to do the job?”

Merwarth is explicit that the metals used for the two rings A and B are not the same: “The outer ring [B] is composed of a *harder metal* than the inner one [A] . . .” Page 1, lines 65 - 67 (emphasis added).

Merwarth also explains why different metals are used. That is, the purpose of the ring A is to seal by compressing when the pipe flanges are drawn together. Page 1, lines 84 - 91.

Compressing the ring A causes it to "take the impressions of the surfaces of [the] flanges, which surfaces are usually rough, and to fill up all inequalities in such surfaces where they bear on the said ring." *Id.*

On the other hand, the purpose of the ring B is to "sustai[n] the soft ring against any pressure which might tend to distort or rupture it . . ." Page 2, lines 2 - 5. Descriptively, the ring B is referred to as a "retaining" ring--not a sealing ring.

Since the rings A and B have different material functions, they naturally have correspondingly different material properties. Particularly, the ring A is formed of a softer material so that it is particularly adapted for its sealing function, and the ring B is formed of a harder material so that it is particularly adapted for its retaining function. There should be no question as to why a person of ordinary skill would seek to use different materials for the two rings--Merwarth teaches doing so.

An issue arises only because Merwarth also makes passing reference to an alternative embodiment, stating that, "if desired, [the rings A and B] can be made of the same size wire and of soft metal, so that the bolt-holes will be sealed by the compression of the eyes [as part of the ring B] . . ."

It should not be overlooked that Merwarth does not state that the rings are formed of the same soft metal. It would be reasonable to interpret Merwarth's silence as implying that the materials are different since, in the previously described embodiments, the materials were described as being different and no change from the *status quo* is indicated. That is, as a matter

of ordinary textual interpretation, one would expect that if a change were intended, it would be mentioned. On that basis alone, it is respectfully submitted that the allegation fails to rise to the level of a *prima facie* case. In addition, it is affirmatively shown in the discussion to follow that forming the rings A and B of the same soft metal would produce an undesirable result.

The stated reason for using the same size wire and forming the ring B of "soft metal" in Merwarth's alternative embodiment is to seal around the bolt-holes, yet it will be noted from Figure 1 of Merwarth (as can be seen in Figure 1 of Appendix A, introduced below) that the bolt-holes are external to the pipe and are not in fluid communication with the contents of the pipe due to the seal at ring A. Persons of ordinary skill understand that it is undesirable to permit fluid carried through the pipe to leak past the ring A into the area of the bolt-holes in the first place, and the reference does not teach or suggest any reason for sealing around the bolt-holes. Neither has the examiner suggested any reason why it should be considered desirable to seal around the bolt-holes. In any event, it would at least be clear to a person of ordinary skill that the main or primary objective for the gasket is to seal against leakage of fluid that is conducted through the pipe, and this sealing is best accomplished at the inner ring A, at the inner periphery of the flange--the source where the very leakage it is desired to prevent would occur.

Returning to the preferred embodiment of Merwarth described above, the physics of sealing with the preferred gasket are considered to provide a frame of reference for drawing inferences regarding how a person of ordinary skill would seek to implement the aforesubscribed alternative embodiment.

The attached "Appendix A" illustrates the preferred embodiment in side elevations of a pipe joint 10 (Figure 1 and Figure 2). With reference to Figure 1, the gasket comprises rings A

and B, and eyes C as shown in cross-section. Bolts 12 are tightened to draw two opposed flanges 14 and 16 together, compressing the gasket. More particularly, since the rings A are formed of larger diameter wire, the rings A compress to the point shown in Figure 2 as a result of a compression force "F" before the flanges make contact with the ring B which is of smaller diameter wire. Compression stops substantially at the point shown in Figure 2 because the ring B (and eyes C) is harder (stronger) than the ring A and therefore resists further compression. At that point, substantially the entire compression force "F" is applied to the ring A, resulting in a sealing stress or pressure that provides the desired seal. Tightening the bolts beyond this point will increase the stress or pressure on the ring B (and eyes C), but will not substantially increase the stress or pressure on the ring A (to the extent that the ring B is formed of a relatively hard wire as described), and so will not substantially increase the sealing stress or pressure on the ring A at the inner periphery P of the flange.

Turning to consider the physics of the alternative embodiment of Merwarth, Appendix B (Figure 3) shows the pipe joint 10 of Appendix A for the alternative, i.e., where all of the rings are formed of the same size wire. Supposing, for purposes of argument, that the wire for the ring B (and eyes C) is the same soft metal. In that case, it is clear from Figure 3 that the sealing stress or pressure available as a result of the compressive force "F" is decreased compared to that in the preferred embodiment (compare Figure 1 of Appendix A) by over half, due to the fact that the same force "F" is being distributed over an area ( $Area_e$ ) that is more than twice the area of contact for the ring A ( $Area_A$ ).<sup>1</sup>

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<sup>1</sup> The sealing stress or pressure is decreased "by over half" because the ring B is circumferentially co-extensive with the ring A, so the force distributed over the rings A and B reduces the stress or pressure by exactly half, plus there are four "eyes" C over which the force is

Moreover, the sealing stress is moved out from the centroid "C<sub>A</sub>" of Area<sub>A</sub>, associated with the ring A, to the centroid "C<sub>e</sub>" of Area<sub>e</sub>, associated with the rings A and B, and the eyes C. Therefore, not only is the sealing stress reduced, but it is moved outwardly away from the inner periphery "P" where sealing pressure is most effective. Persons of ordinary skill would recognize this as an undesirable result, and therefore would recognize that it would be undesirable, in carrying out this alternative embodiment of Merwarth wherein the wires for the rings A and B are the same size, to form the wires of the same soft metal.

The fact that persons of ordinary skill would recognize that it is undesirable to carry out the alternative embodiment of Merwarth in the manner proposed by the examiner demonstrates that the proposed implementation is not obvious, and it should not be necessary for Appellant to make any further showing. However, it may be helpful to point out that persons of ordinary skill would be able to recognize an implementation of this alternative embodiment of Merwarth that avoids the problem noted above and still meets the primary objective for a gasket. All that would be required is to form the ring B (and the eyes C) of a *softer* metal than that used for the ring A (recall that the reference indicated that a "soft metal" should be used).

To the extent that the ring B is made *softer* than the ring A, the ring A will assume more and more of the load "F." The sealing pressure will increase, because more of the load "F" will be concentrated within the relatively small area "Area<sub>A</sub>" associated with the centroid C<sub>A</sub> instead of being spread over the much wider area "Area<sub>e</sub>" associated with the centroid C<sub>e</sub>. The sealing pressure will also be moved closer to the inner periphery "P" where it will do the most good. Both effects will act to better prevent leakage, which is the primary objective for the gasket.

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further distributed, further decreasing the stress to more than half.

In addition, some sealing will still be provided at the bolt-holes as is consistent with this alternative embodiment of Merwarth, because very soft metal will deform under a compressive load. Sealing pressure around the bolt-holes would be reduced somewhat by making the ring B very soft as a trade-off for increasing the sealing pressure at the ring A, to prevent leakage at the inner periphery of the flange. Persons of ordinary skill would recognize this trade-off as being desirable because such persons would recognize that sealing around the bolt-holes--assuming that sealing around the bolt-holes is considered desirable at all-- is certainly less important than sealing the contents of the pipe. For these reasons, it is respectfully submitted that a person of ordinary mechanical skill would decline to use the same sealing materials for the rings A and B. Accordingly, the teaching of Merwarth in connection with this alternative embodiment, coupled with the common knowledge possessed by persons of ordinary skill, leads the person of ordinary skill away from the claimed invention.

As explained in the Appeal Brief, Merwarth's proposal to seal around the bolt-holes could also be implemented according to the principles of the preferred embodiment of Merwarth. According to those principles, a smaller diameter wire and harder material is used for the ring B than for the ring A, just as Merwarth describes. It is readily apparent that the material of the ring B could be harder than that used in the ring A yet still be soft enough to provide some sealing around the bolt-holes. The trade-off here is to sacrifice some capability for the ring B to perform its desired retaining function to provide increased capability to seal around the bolt-holes. Here, the teaching of Merwarth is sufficient by itself to lead the person of ordinary skill away from the claimed invention.

In summary, Merwarth proposes just two alternatives: (1) the diameter of the wire used for the ring B is smaller than the diameter of the wire used for the ring A; and (2) the diameters are the same for the two rings. In the preferred alternative (1), Merwarth is explicit that the ring B is formed of a harder material than is used for the ring A. This provides a stronger gasket, yet some strength could be sacrificed in favor of sealing around the bolt-holes without losing the ring B's retaining function so long as the material used for the ring B remains sufficiently harder than that used for the ring A.

Alternative (2) is proposed for the express purpose of sealing around the bolt-holes. In this alternative, for the reasons explained above, a person of ordinary mechanical skill would recognize that the ring B should be formed of a softer material than is used for the ring A to maintain good leak-preventing performance of the gasket while still providing for sealing around the bolt-holes. Under either alternative (1) or alternative (2), the straight-forward implementation of Merwarth's teachings is to form the rings of different metals, contrary to the claimed invention.

Finally, please note that the claims in Merwarth recite "a portion of soft metal . . . and a metal holder or retaining portion *of a different nature* [i.e., not the same sealing material] from the soft-metal portion . . . ." The claims in Merwarth provide still further evidence that Appellant's interpretation of the specification is correct, i.e., that the materials used for the two rings in Merwarth are different.

Point-By-Point Replies to the Answer

1) Page 5 (last line) - Page 6, line 1 of the Answer: There, it is asserted that Appellant's arguments only apply only to the embodiment of Figure 1 and not to the embodiment of Figures 3 and 4.

To the contrary, Appellant's arguments concern the embodiments of Figures 3 and 4 and not the embodiment of Figure 1, since only the embodiment of Figures 3 and 4 can even be argued to include all of the elements claimed.

In any event, the two embodiments are not different insofar as what they teach regarding the relative qualities of the parts A and B which are common to both. This is clear for at least two reasons. First, Merwarth states that “[l]etters of like name and kind refer to like parts in each of the figures” (Page 1, lines 42 - 43). Therefore, since the embodiment of Figures 3 and 4 uses letters of like name and kind to those used in Figure 1, the parts A, B, and C are the same in both embodiments.

Second, Merwarth states that the embodiment shown in Figures 3 and 4 is the same as the embodiment of Figure 1 except that it includes, in addition, “a second soft-metal packing ring F . . .” See Page 2, lines 11 - 21. The existence of a second packing ring F is not disclosed to have any consequence or significance to the relative qualities of the parts A and B, nor is there any reason that the existence of a second packing ring F would be expected to have any such significance. Therefore, Appellant's arguments necessarily pertain equally to both the embodiment of Figure 1 and the embodiment of Figures 3 and 4.

2) Page 6, lines 4 - 6 of the Answer: There, it is admitted that Merwarth does not disclose that the "wire C" (i.e., the wire B of which the eyes C are formed as loops thereof) and the wire A are the same material as claimed. It is nevertheless asserted that the "wire C" (i.e., the wire B) and the wire A are formed of the same material because "there is no indication" to the contrary.

Actually, there is an indication to the contrary. As pointed out above, Merwarth expressly states that in the preferred embodiment of the invention, the wire A and the wire C are formed of different materials (Page 1, lines 65 - 67).

In the alternative embodiment discussed above, Merwarth does not indicate whether the materials are the same or not; however, failing to indicate one way or the other is neither anticipating, nor is it teaching or suggesting.

3) Page 6, lines 8 - 10: The Answer attributes the following argument to Appellant: "the ring B (and therefore the spokes C) must be harder than ring A or the gasket will be destroyed because ring B will no longer serve as a "retaining ring."

To clarify the argument: Merwarth teaches making the ring B harder than the ring A so that it can serve effectively as a retaining ring. Therefore, if the ring B is not harder than the ring A, the ring B will be less effective as a retaining ring, which is contrary to the intended purpose of the ring B. The point is that it is not obvious to modify a reference so that the disclosed structure becomes less suitable for its intended purpose. MPEP 2145(X)(D).

4) Page 6, lines 12 - 14 of the Answer: There, it is stated that “[e]ven though ring B is disclosed as a harder metal for the embodiment of Figure 1, the spokes C (of Figure 3) are now disclosed as a soft metal because they serve a different function than in the other embodiment.”

To clarify, Appellant never disputed that the parts disclosed in Merwarth are formed of soft metals. Appellant disputes that Merwarth discloses, teaches, or suggests forming the parts of the same soft metal.

In that regard, please note that the parts B and C are the same in Figures 1 - 4 and are not disclosed to serve different functions in the embodiment of Figure 1 than in the embodiment of Figures 3 and 4. Rather, the difference between the embodiment of Figure 1 and the embodiment of Figures 3 and 4 is merely that the embodiment of Figures 3 and 4 has *an additional outer ring F*. “This construction provides a double packing for the joint, a packing near the opening in the pipe, and a packing near the outer peripheries of the flanges.” Merwarth at Page 2, lines 21 - 24.

There is no suggestion in Merwarth, and there is otherwise no reason to suppose, that adding the ring F to the structure of Figure 1 (which includes parts A, B, and C) in any way affects the choice of materials for the parts B or C.

5) Page 6, lines 19 - 21 of the Answer: There, it is asserted that “Merwarth discloses many embodiments, not all of which include a harder retaining ring,” citing Figure 5 and page 2, lines 35 - 38 of Merwarth.

It is true that Merwarth discloses other embodiments, but no other embodiment has been cited against claim 55, and no other embodiment is more pertinent to the ground of rejection than the embodiment of Figures 3 and 4.

The embodiment of Figure 5 comprises a “single soft metal ring” G. Page 2, lines 36 - 37. A series of eyes G’ are soldered to the single ring G which engage the bolts of the pipe flange. The eyes G’ are formed of “sheet metal” that is “thin enough to permit the packing-ring to be properly compressed.” Page 2, lines 43 - 45. Accordingly, the embodiment of Figure 5 is a single soft metal ring with sheet metal eyes. Structurally, this is equivalent to the embodiment of Figure 1 except that the ring B and eyes C in the embodiment of Figure 1 are replaced in the embodiment of Figure 5 with a single sheet metal part. There is no disclosed reason to form the part G’ of the embodiment of Figure 5 of sealing material at all, since the part G’ does not have any sealing function.

6) Page 6, line 20 - Page 7, line 1 of the Answer: There, it is asserted that the objective of Merwarth is to provide a gasket that is effectively centered on and seals the joint for containing or conveying fluids or liquids “whether under pressure or not” (citing page 1, lines 45 - 54) (emphasis added). The Answer draws the conclusion from this passage that forming the retaining ring B of a harder metal is “not critical” in Merwarth.

First, it should be understood that the law does not require that any differences between the claimed invention and a disclosed structure be “critical.” It is enough to defeat an allegation of anticipation that the reference simply fails to disclose one of the limitations of the claim, and it is enough to defeat an allegation of obviousness that the reference simply fails to teach or suggest the claimed invention as a whole. In addition, the quoted passage actually proves the opposite of what is concluded in the Answer, and thereby provides additional evidence supporting Appellant’s argument.

By definition, a gasket adapted for use “whether under pressure or not” must be adapted for use under pressure. This is simply because, if the gasket were not adapted for “use under pressure,” it would not be adapted for use “whether under pressure or not.” Therefore, the quoted passage indicates that it is critical to adapt the gasket for use under pressure, to meet the objective of providing a gasket that can function either way. The reference discloses that, to retain the ring A against this pressure, the ring B should provide a retaining function, and this retaining function is disclosed to be served by forming the ring B of a harder (stronger) material than the ring A.

7) Page 7, lines 2 - 3 of the Answer: There, it is submitted that the ring B would still function as a retaining ring when made out of the same material as A (or F). That may be true to some extent; however, the mere fact that a reference *can* be modified and still function is not enough to establish the teaching or suggestion needed for *prima facie* obviousness. MPEP 2143.01.

8) Page 7, line 8 of the Answer: There, the argument that forming the gasket of Merwarth as claimed is merely a design choice is maintained, on the ground that “selecting a known material based on its suitability for its intended use is not inventive” (citing *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960)).

Appellant does not understand how *In re Leshin* is being alleged to apply to claim 55. Claim 55 recites no particular material (such as the plastic in *In re Leshin*); hence, patentability

of claim 55 is not premised on “selecting a known material based on its suitability for intended use.”

9) Page 7, lines 13 - 18 of the Answer: There, the Answer states that the examiner’s original argument that using the same material for the rings A and B in Merwarth would “ease manufacturing” does not imply that the gasket in Merwarth must be formed integrally.

Appellant agrees that the gasket in Merwarth need not be formed integrally. However, there is no discernible manufacturing advantage in using the same material for the rings A and B if they are not formed integrally. Merwarth teaches forming the gasket from separate parts; accordingly, Merwarth teaches against forming the gasket integrally and therefore teaches contrary to the allegation.

### Claim 85

Claim 85 was rejected on an allegation that the claimed “square outer periphery” carries no patentable weight, because it is “merely a design choice.”

The Answer clarifies that the rejection is based on *In re Dailey* , 357 F.2d 669, 149 USPQ 47 (CCPA 1966). *In re Dailey* is cited for the proposition that “changes in shape are considered obvious design choices absent persuasive evidence” (see MPEP 2144.04(IV)(B) (“Changes in Shape”). *In re Dailey* states:

“Appellants have presented no argument which convinces us that the particular configuration of their container is significant or is anything more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing mating surfaces in the collapsed container of Matzen.”  
357 F.2d at 672-73.

The claims at issue in *In re Dailey* recited a nursing container comprising “a bottom section . . . having a shape that in the collapsed condition is closely mated with the interior of the top section,” and one of the dependent claims recited further that the top and bottom sections were “portion[s] of a sphere less than a hemisphere.”

As the passage quoted above indicates, the court in *In re Dailey* held that it was obvious to modify the Matzen reference by providing mating surfaces having a different configuration, since the court was not persuaded that the particular configuration made any significant difference as compared to alternative configurations in performing the function of providing mating surfaces.

In this case, however, there is no dispute that the square outer periphery of claim 85 does make a significant difference, as compared to alternative (e.g., round) configurations, in performing the function of providing corners that may protrude from a pipe joint, the corners being usable as handles for manipulating the gasket in the flange. Accordingly, the reasoning used to reject the claims in *In re Dailey* does not apply to this case. The rejection therefore stands without any legal basis.

At Page 8, lines 17 - 21 of the Answer, it is argued that the claimed shape may be considered to be “merely a design choice” because “there is no criticality supported in the specification as to shape” and “no mention of the purpose of the square shape, or any problems

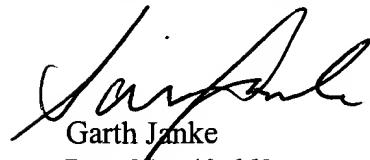
solved with the square shape. These arguments (along with the related argument At page 8, lines 11 - 16) are in direct conflict with the MPEP. MPEP 716.02(f) makes it clear that the specification need not say anything at all about the significance or advantage of what is claimed:

Although the purported advantage . . . was not disclosed in the specification, evidence and arguments rebutting the conclusion . . . [of the claimed feature being] merely a 'design choice' should have been considered as part of the totality of the record. "We have found no cases supporting the position that a patent application's evidence or arguments . . . must be contained in the specification." (emphasis added) (citing *In re Chu*, 66 F.3d 292, 36 USPQ2d 1089 (Fed. Cir. 1995).

In other words, it is not necessary that the specification indicate that the claimed shape is critical, it is not necessary that the specification indicate any purpose for the claimed shape, and it is not necessary that the specification indicate any problems solved with the square shape. Appellant has provided evidence and arguments that the claimed shape is functional, to the extent that there is not any dispute that the claimed shape is in fact functional. The law therefore requires that the claim be examined in consideration of all of its limitations.

It is finally asserted at Page 8, line 21 of the Answer that "[t]o allow the argued features would be new matter." Please note that all of the features of claim 85 were present in the claims as originally filed, so nothing in claim 85 can be considered new matter.

Respectfully, submitted



Garth Janke

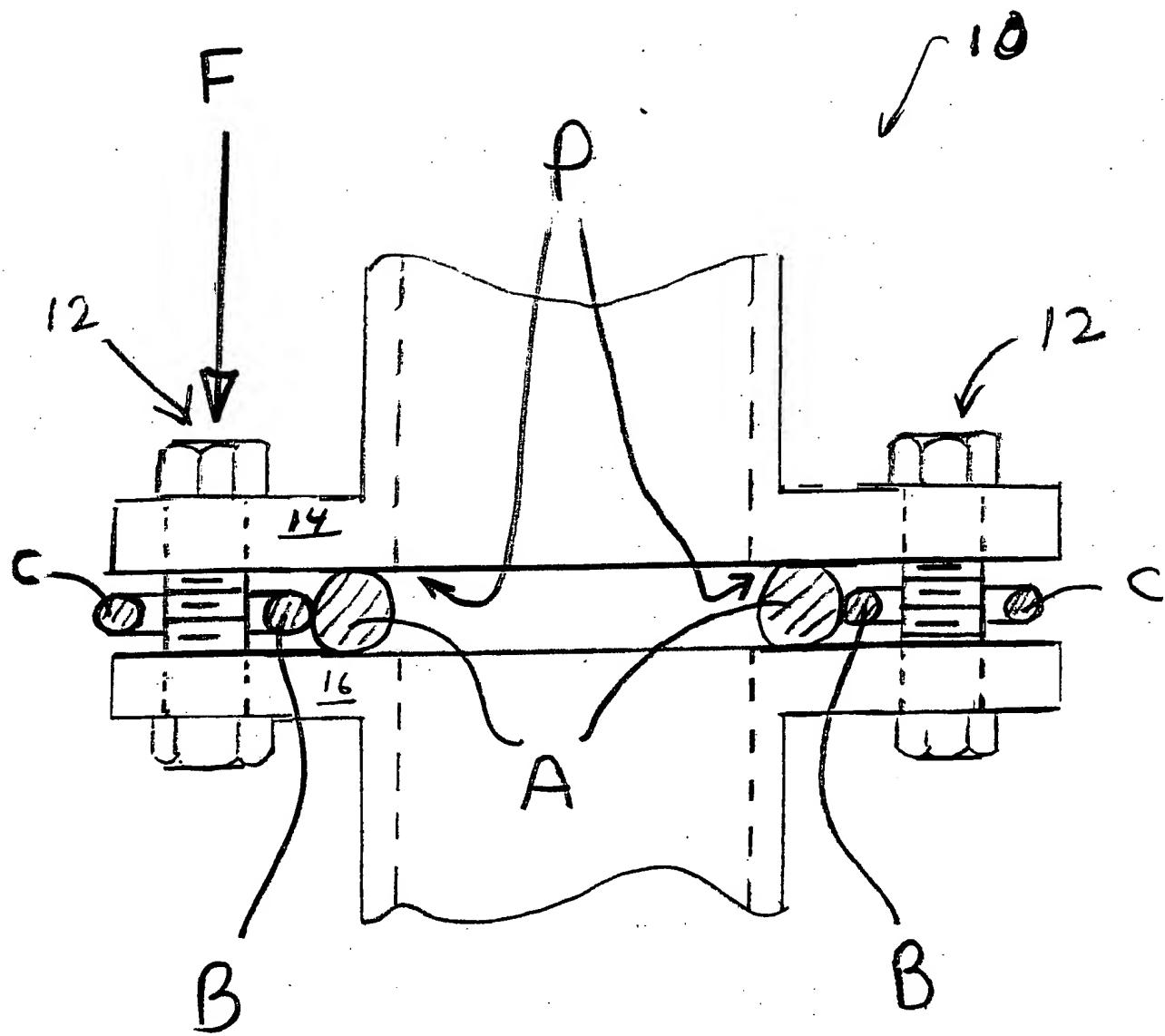
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## APPENDIX A

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**FIGURE 1**

APPENDIX A

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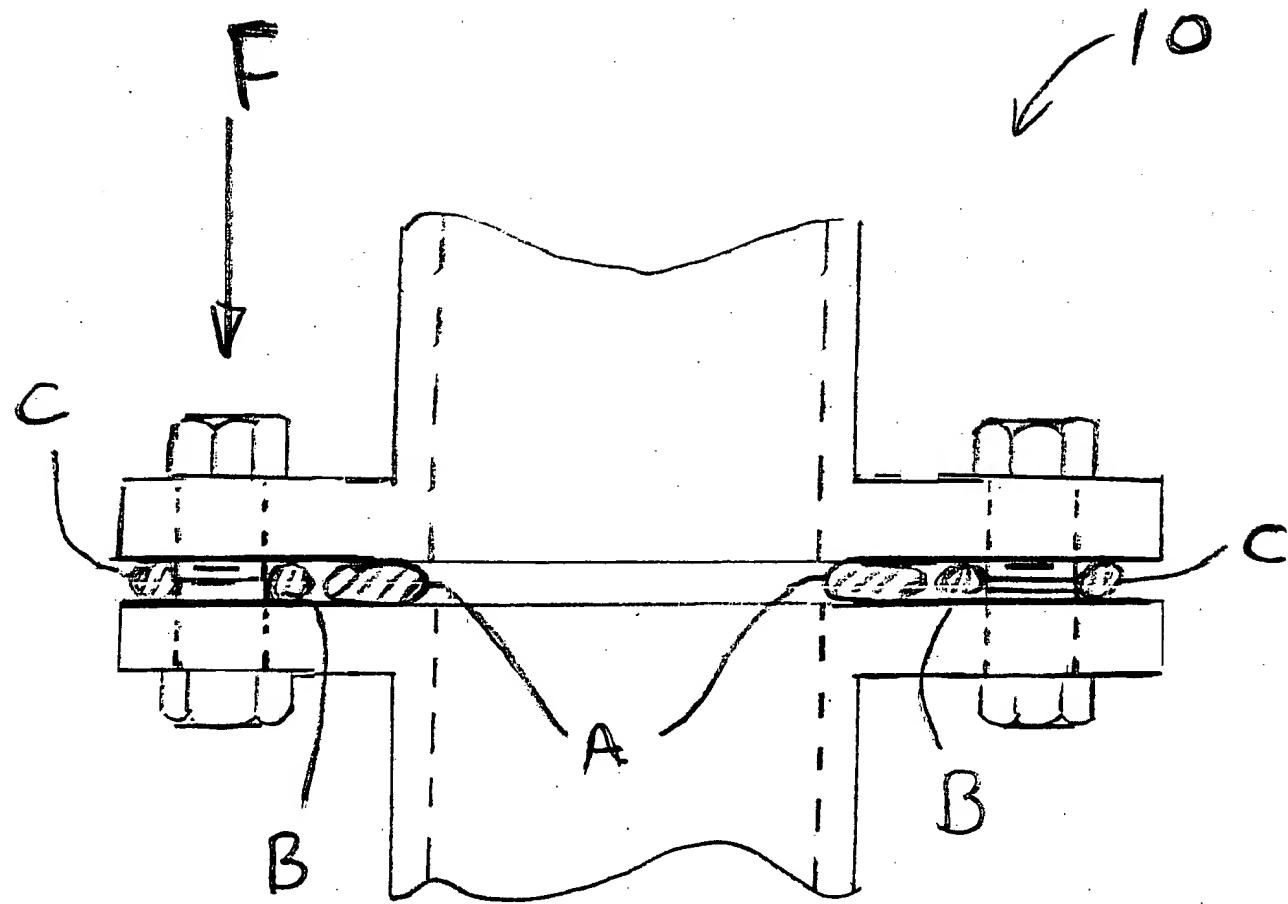


FIGURE 2

APPENDIX B

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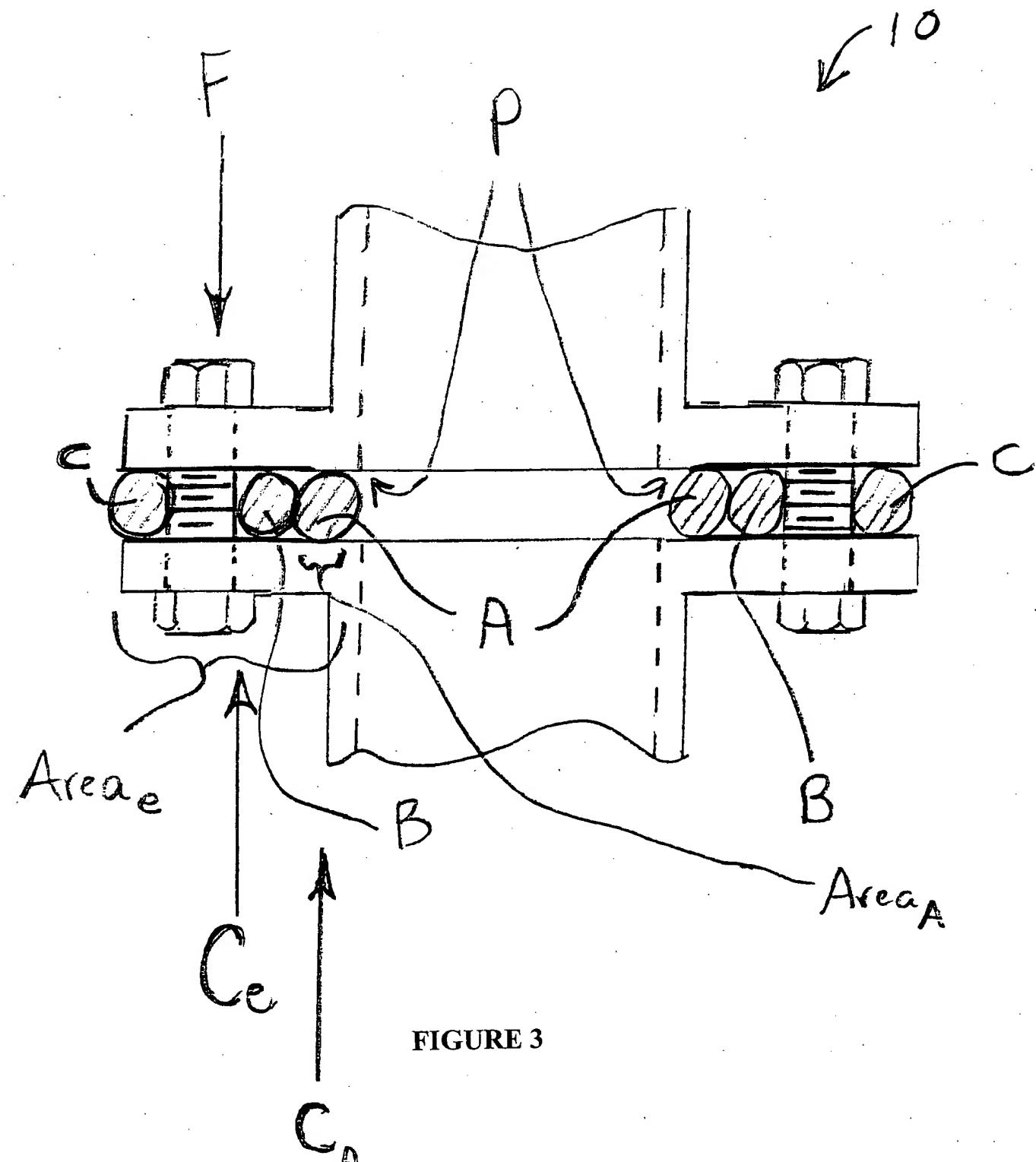


FIGURE 3

TRANSMITTAL LETTER  
(General - Patent Pending)

Docket No.  
P 97 194.024

In Re Application Of: Ronald L. Carr

SEP 29 2003

Serial No.  
08/952.001

Filing Date  
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Examiner  
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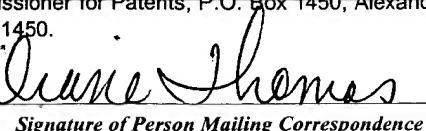
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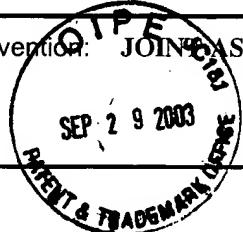
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Invention: **JOINT ASSEMBLY EMPLOYING MULTI-RING GASKET**



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